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MAIL DATE
October 16, 2001

Decision 01-10-031 October 10, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Increase Rates and Charges for Electric and Gas Service Effective on January 1, 1999.	Application 97-12-020 (Filed December 12, 1997)
Investigation into the Reasonableness of Expenses Related to the Out-Of-Service Status of Pacific Gas and Electric Company's El Dorado Hydroelectric Project and the Need to Reduce Electric Rates Related To This Non-Functioning Electric Generating Facility.	Investigation 97-11-026 (Filed November 19, 1997)
Application of Pacific Gas and Electric Company for Authority, Among Other Things, to Decrease its Rates and Charges for Electric and Gas Service, and Increase Rates and Charges for Pipeline Expansion Service.	Application 94-12-005 (Filed December 9, 1994)
Order Instituting Investigation Into Rates, Charges, and Practices of Pacific Gas and Electric Company.	Investigation 95-02-015 (Filed February 22, 1995)

ORDER GRANTING REHEARING OF AND MODIFYING DECISION 00-02-046

On December 12, 1997, Pacific Gas and Electric Company (PG&E) filed its 1999 test year general rate case (GRC) application. On February 25, 2000, the Commission issued Decision (D.) 00-02-046 (the Decision) in the revenue requirements phase of this proceeding. D.00-02-046 determines the base electric and gas revenue requirements for PG&E for the 1999 test year.[1] Timely applications for rehearing of the Decision were filed by The Utility Reform Network (TURN) and James Well (Weil) on behalf of himself as an individual customer of PG&E. PG&E filed a response opposing the applications for rehearing. In addition, on January 11, 2001, TURN and Weil filed a joint petition for modification requesting that D.00-02-046 be modified to rescind or suspend the attrition adjustment authorized by that Decision. Finally, on February 16, 2001, PG&E filed a separate petition for modification seeking changes to the Decision "to conform the words and numbers to the intended results ... and to make two procedural clarifications ...... (PG&E Pet. Mod., pp. 1-2.)

We have considered all the allegations raised in the applications for rehearing and the response thereto, and are of the opinion that rehearing should be granted in a number of areas, both for the purpose of taking additional evidence and making necessary modifications to D.00-02-046. We discuss our reasoning below. We will resolve the petitions for modification in a separate order.

TURN begins with a discussion of the burden of proof and substantial evidence standards, and a generalized challenge to the way we have applied these standards. In addition, TURN and Weil both raise specific challenges to the adopted outcome on a number of disputed issues, where they allege we failed to correctly apply the burden of proof and substantial evidence standards in our analysis of these issues.

I. TURN

A. <u>Introduction</u>.

TURN acknowledges that we correctly set forth the applicable principles regarding PG&E's burden of proof in this case, and the necessity for substantial evidence to support the Commission's determinations. However, TURN challenges our application of both principles. TURN first contends that in several specific areas PG&E has not sustained its burden of producing clear and convincing evidence that it requires the

[1] Several additional issues are also resolved; see D.00-02-046, pp. 15-16.

increased revenues it seeks. In those instances, TURN maintains, the Commission is prohibited by Public Utilities Code sections 451 and 454 from granting the increases.[2] Moreover, TURN argues it is incorrect for us to have stated, in Conclusion of Law 6: "It is PG&E's obligation *generally* to support its application through clear and convincing evidence." (Emphasis added.) TURN claims a utility must support every part of its application with clear and convincing evidence.

Secondly, TURN contends that we have the legal obligation to discuss in sufficient detail the reasons for our adoption of the increased revenues, including the substantial evidence supporting our actions. Because of the recent changes to the Public Utilities Code enacted by SB 779 concerning the standard of review of Commission decisions by the courts, it is no longer sufficient for us to simply rely on "any evidence" to support our decisions, which is also acknowledged by PG&E in its opening brief. TURN argues that in the specific subject areas it challenges, because PG&E did not meet its burden of proof the evidence was either lacking or insubstantial, and our Decision provides insufficient justification for the outcomes reached.

PG&E responds that TURN confuses the two evidentiary standards, and then argues that TURN's objection to Conclusion of Law 6 is misplaced. This is apparently because, according to PG&E, while we chose the clear and convincing standard for PG&E "in this case," we could have chosen a less stringent standard, e.g., the "preponderance of the evidence" standard "as suggested by PG&E." (PG&E Response to Apps. Rhg, p. 2.) PG&E also argues that it is not necessary for it to have presented uncontradicted or "perfect" evidence in order for the Commission to rule in its favor on an issue.

PG&E further argues that it is the role of the courts, and not the Commission or any of the parties, to evaluate whether the Decision is supported by substantial -

[2] Statutory references are to the Public Utilities Code unless otherwise noted. Section 451 provides, in relevant art: "All charges demanded or received by any public utility, . . . shall be just and reasonable." Section 454 provides, in part: "Except as provided 1n Section 455, no public utility shall change any rate or so alter any classification, contract, practice, or rule as to result in any new rate, except upon a showing before the commission and a finding by the commission that the new rate is justified."

evidence. PG&E asserts that while the substantial evidence standard is more rigorous than the old "any evidence" standard, the courts will still show considerable deference to the Commission as factfinder, even under the clear and convincing burden of proof. In response to TURN's argument that we must provide an explanation for our conclusions, PG&E says TURN confuses the necessity of having appropriate findings with the necessity of having substantial evidence to support those findings. PG&E asserts we have satisfied both requirements, even though "the Commission may not have drawn a crystal-clear nexus between the record evidence and its findings on every issue...." (*Id*., p. 5.)

We are of the view that TURN is correct in its criticism of Conclusion of Law 6. We have historically, although not wholly consistently, applied the clear and convincing burden of proof to utilities seeking general rate increases. We applied the clear and convincing standard to PG&E in this case. This standard is applicable to all aspects of PG&E's showing. The Decision contains six pages (pp. 34-40) discussing at length both the clear and convincing standard and the substantial evidence standard. Moreover, the Decision explicitly reiterates later that "we must insist upon PG&E demonstrating, for each component of its proposed revenue requirements, that it produce clear and convincing evidence. To the extent it fails to do so, we cannot grant its requested revenue increase." (D.00-02-046, pp. 64-65; see also p. 108, n. 11 - PG&E's burden of proof never changes.) In stating that PG&E's obligation is *generally* to produce clear and convincing evidence, Conclusion of Law 6 is clearly inconsistent with this principle. We will modify it accordingly.

B. <u>Specific Issues Raised by TURN</u>.

In virtually all of its challenges to our resolution of specific disputed issues, TURN asserts that not only are we inconsistent in often being highly critical of PG&E's showing and then turning around and awarding it all or nearly all the money it asks for, but that we also commit legal error in doing so, either because PG&E has not provided clear and convincing evidence or because the record does not contain substantial evidence to support our action. PG&E counters that TURN is merely rearguing positions it took in presenting its case on the merits, and dressing those positions in the guise of legal errors related to the "clear and convincing" and "substantial evidence" standards. PG&E asserts TURN should not be allowed to use the procedural vehicle of an application for rehearing to reargue issues on which it lost.

PG&E's argument has little merit here. While often we do reject arguments raised in applications for rehearing because they simply reiterate parties' positions taken in the case and rejected by the Commission, the situation in this case is not that simple. In addition to its evidentiary challenges, TURN does point out numerous instances of serious inconsistencies in D.00-02-046 which TURN believes call into question our final resolution of the issues raised by TURN. We have a regulatory responsibility to ensure PG&E provides adequate service at just and reasonable rates, and we must view the facts accordingly. Our legislative mandate encompasses promoting the "safety, health, comfort, and convenience of [PG&E's] patrons, employees, and the public." *See* §451. In construing substantial evidence, we must consider all factors that may have a bearing on this goal. The California Supreme Court has held that the courts "must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute." (<u>Calif. Hotel & Motel Assoc. v. Industrial Welfare Comm'n</u> (1979) 25 Ca1.3d 200, 212 (fn. omitted).) We believe TURN's allegations warrant at the very least a careful review of the record and of our Decision on those issues, and we have undertaken that review.

1. <u>Electric Distribution Capita1 Spending</u>. TURN begins by stating: "The Commission devotes a number of pages to criticisms of PG&E's forecasts and the process by which the utility developed such forecasts, then gives the utility the money anyway." TURN argues that under the clear and convincing evidence standard, we cannot find PG&E's case so deficient, and at the same time, find it reasonable. TURN then enumerates the following specific allegations of error.

a. TURN contends there is no evidence to support what appears to be our assumption that PG&E's 1998 forecasted amount of capital expenditures, used to develop the test year forecast, was ever completely spent, much less that virtually every dollar of investment resulted in "used and useful" plant. TURN argues that in the absence of such evidence, it is legal and factual error for us to authorize PG&E to recover in rates amounts that were not spent, on plant that does not exist. TURN cites four exhibits (Ex. 445, 446, 447, and 448) which it contends show that not every forecast dollar was spent in 1998. TURN states that even if we are convinced that PG&E should recover every dollar actually invested in 1998 in its electric distribution plant, rehearing would still need to be granted to reduce the authorized recovery to that level.

PG&E responds that it presented substantial evidence supporting the amount it requested for capital expenditures in 1998. PG&E further asserts that in suggesting that the record could have reflected *recorded* capital spending in 1998, TURN has the time frame wrong. Since the record closed in 1998, all PG&E could do was provide a basis for a *forecast* of full-year 1998 spending. PG&E claims TURN is trying to get us to reweigh the evidence, which is improper at the application for rehearing stage. PG&E also argues that in requesting rehearing to reduce the adopted level to the recorded level, TURN's proposed remedy amounts to asking us to set aside submission and reopen the proceeding for taking of new evidence, which PG&E claims is improper after the issuance of a decision, per Rule 84.

We are of the view that the evidence TURN points to strongly indicates that PG&E was not going to spend all the dollars it claimed it would spend in 1998, and that therefore, using that forecast for developing the test year capital expenditures forecast might well have been improper. We agree with TURN that it would be legal and factual error for us to authorize PG&E to recover in rates amounts that were not spent, on plant that does not exist.

To correct this, we can adjust the adopted forecast to reflect only amounts we know PG&E spent in 1998; however, because the record was closed before 1998 ended, this would be certain to leave legitimate expenditures unaccounted for. Alternatively, we can giant rehearing to allow PG&E to put in evidence of exactly how much it invested in its electric distribution plant in 1998. We choose the latter course. We will not disallow anything at present. However, in conjunction with the rehearing we will order that any rates that are raised based on the electric distribution capital forecast adopted in D.00-02-046 be made subject to refund, to allow for the possibility that this forecast may be adjusted pending the results of the rehearing.

b. After reviewing our discussion of PG&E's "overall approach" to its forecast of capital spending on its electric distribution system, TURN contends that in concluding this approach was reasonable, we committed legal error. (TURN App. Rhg, pp. 9-11, citing D.00-02-046, p. 185.) This is because while PG&E based its forecasting effort on improving reliability, PG&E never even tried to make a showing that its overall approach in any way matched reliability spending with a reasonable amount of reliability likely to be achieved. TURN argues that our own statements, including Finding of Fact 14 and Conclusion of Law 12, are contradictory to our conclusion that PG&E's approach was reasonable.

PG&E responds that we properly weighed the evidence and reached our result on this issue, and that TURN's disagreement over our conclusion that electric distribution capital should be spent on reliability improvements is not tantamount to legal error.

TURN is correct that PG&E did not attempt to relate specific areas of spending to a reasonable amount of reliability likely to be achieved. PG&E's case was based on the professional engineering and operational judgment of its experts. TURN is also correct that after noting that we must "also consider the economic dimension of the proposed spending," we found serious weaknesses in PG&E's showing but despite those weaknesses, we approved PG&E's approach as reasonable. (D.00-02-046, p. 185.) We affirm our determination, subject to the modifications we make in other portions of this order. By and large, despite the high value we placed on the expert testimony of other parties, we found more persuasive the testimony of PG&E's professional experts. We believe that with the changes we make today, the revenue increases we authorize to

PG&E will ensure a level of reliability that will further the public interest to a greater degree than the figures recommended by other parties. We will modify those portions of our discussion in D.00-02-046 which appear to be inconsistent with this conclusion. Again, we reiterate that based on our further review of the record, we are modifying our findings in certain areas of electric capital spending in today's order. We also confirm our intention that the audit we have ordered in D.00-02-046 will provide an important tool for addressing the problems we have identified concerning the reasonableness of PG&E's approach to capital spending.

c. TURN contends that after characterizing TURN's witness in this area, Mr. Marcus, as "bring[ing] a useful and important perspective to the development of a reliable forecast of PG&E's spending needs," in addition to criticizing PG&E's "inattention to economic analysis in the development of its capital spending plan" (D.00-02-046, p. 195), we largely ignored Mr. Marcus' testimony and despite the inconsistency with the evidentiary record, allowed PG&E's inattention to economic analysis to carry the day. TURN particularly criticizes our adopted figures in the areas of substation capacity projects, PG&E's update showing, MWC (Major Work Category) 17 (Emergency Response Work), new business and meters, and MWC 10 (Work at the Request of Others). TURN points to what it considers to be numerous factual and legal errors, internal inconsistencies of the Decision in often granting PG&E full recovery of its forecast amount after explaining in some detail the utility's failure to establish the reasonableness of its figure, and what TURN considers to be our effectively assigning to TURN the burden of proving the unreasonableness of PG&E's forecast.

In responding to each of TURN's allegations, PG&E reiterates its theme that it is for the trier of fact to weigh the evidence, and that we did so appropriately. PG&E cites to evidence it presented in all of the above specifically referenced issue areas but new business. PG&E does not, however, discuss this evidence.

The most problematic area here is that of Emergency Response Work (MWC

17). This is work done when equipment fails suddenly (i.e., there is a sudden outage) due to damage from vehicles, trees, weather, animals, birds, and other reasons. TURN argues the Decision itself states that PG&E has failed to support its request for making its case, but then goes on to award what PG&E has requested:

> PG&E notes that its forecast for MWC-17 in 1998 reflects a 10.8% decrease from 1997. PG&E believes that this shows its forecast is appropriate. However, as TURN points out, PG&E spent almost $93 million in 1997 after spending $55 million in 1996. PG&E's [sic] has not shown that its proposed spending for 1998 and 1999 is reasonable by virtue of reference to the high level of spending in 1997, nor has it otherwise provided adequate justification for the increased level of spending. Nevertheless, we will not disallow capital expenditures made specifically for reliability recorded in 1997 and 1998 simply on the basis of a claim of an unpredictable (or unpredicted) spending pattern. We have no basis for further reducing PG&E's estimate on this record. (D.00-02-046, p. 198.)

We have reviewed the record and have determined that we must modify our determination with regard to this category of spending. The problem is that not only does PG&E have the burden of proof, TURN did not just argue that PG&E's request for 1998 should be reduced because of an unpredictable or unpredicted spending pattern. TURN showed that while PG&E's formula ($X times the number of outages) predicted 1996 spending ($55 million) quite well, actual 1997 spending ($92.9 million) increased dramatically with a smaller number of outages, without explanation. TURN showed that PG&E had included $25 million in its 1998 estimate which was not required to be spent on a consistent basis. TURN argued that PG&E's 1998 and 1999 requests of $82.6 million and $76.7 million should be reduced to $65 million and $63 million.

PG&E did not refute TURN's showing, but posited that because its 1998 forecast was a 10.8% decrease from recorded 1997 levels and its 1999 forecast was a 16.1% decrease from 1997 recorded levels, its test year forecast was appropriate. As cited above, we specifically stated that PG&E had not provided adequate justification for its increases for 1998 and 1999, but we then adopted only TURN's disallowance for 1999, "subject to the audit of 1999 capital spending." *Id*. We find no basis for adopting TURN's' 1999 recommendation but not its recommendation for 1998, which was based on exactly the same figures and rationale. Therefore, we will grant rehearing to modify the Decision to adopt TURN's 1998 figure - $65 million rather than PG&E's requested $82.6 million.

The other problematic area is that of new business. TURN correctly argues the Decision does not address its argument that PG&E's figures should be adjusted to reflect reductions in unit costs, which it claimed reflected PG&E's own internal projections. We inadvertently failed to address the issue of unit costs in the Decision, and we will modify it accordingly. We disagree with TURN, however, that PG&E's unit cost figures must be adjusted. PG&E demonstrates in its comments to the ALJ's Proposed Decision that it used the same "cost-to-connect" formula as did TURN to forecast future new business plant additions. This formula took into account a 3% reduction from 1997 unit costs in 1998, and a 10% reduction from 1997 unit costs in 1999. (PG&E Comments on the ALJ's Proposed Decision, p. 13.)

d. TURN alleges that in relying on Mr. Pearson, PG&E's rebuttal witness in the area of electric distribution capital expenses, the Commission has committed legal error because an examination of the record shows he was not a credible witness. TURN also criticizes the Decision's statement that after recognizing that "the record is not sufficient for us to make a reasoned judgment as to the precise relationship between reliability and cost", "[i]f we must err, we choose to err on the side of reliability in terms of authorized spending." (D.00-02-046, p. 201.) TURN argues that because PG&E has the burden of proof, if the record is not sufficient to allow a conclusion to be drawn as to the relationship between reliability and cost, PG&E's request must be denied.

PG&E replies that it is not appropriate in an application for rehearing to challenge the credibility of a witness. PG&E further asserts, once again, that it is the Commission's job to assess the weight of the evidence, which includes assessing the credibility of witnesses, and that the Decision indicated the Commission found the engineering judgment of PG&E's witnesses to be more probative than the judgment of TURN's economist. PG&E finally claims that TURN's allegation that Pearson and PG&E's witness Randolph presented inconsistent testimony in coming to different conclusions about the same data is misplaced, since the two witnesses looked at different years of data. On the issue of erring on the side of reliability in the absence of a record justifying PG&E's proposed expenditures, PG&E claims that our statement is just "another way of saying that the Commission needed to recognize the need for reliability without following a 'reliability-at-any-cost' approach." (PG&E Response, p. 11.)

PG&E's claim that witnesses Pearson and Randolph were talking about two different timeframes concerning declining reliability does not hold up when the record is examined. Pearson discusses 1992-1997, and Randolph addresses 1994-1997. This is hardly so far off that one can say they analyzed different years of data. However, TURN's claim does not hold up completely either; when major events were included, both witnesses' conclusions that reliability had declined over these timeframes were similar.

We remind the parties that there is no absolute requirement that we must base our electric distribution capital expenditures determination on economic analysis to the exclusion of the professional judgment of PG&E's operating and engineering experts. It will depend on specific facts in the record as to whether reliance on professional operating and engineering judgment will pass the substantial evidence test. In reviewing those specific facts, we affirm that except in the areas indicated above, we are persuaded that the evidence provided by PG&E satisfies its burden of proof and the substantial evidence test.

2. Gas Distribution Capital – Gas Pipeline Replacement Program.

TURN contends the Commission erroneously approved PG&E's 1999 forecast of $78 million for the distribution component of PG&E's Gas Pipeline Replacement Program (GPRP), despite record evidence showing a pattern of underspending in prior years, including 1998, and other evidence indicating that PG&E would spend less in 1999 than the forecast amount. TURN argues the Commission's rationale - that there was only a relatively small difference between ORA's and PG&E's forecasts for this component, thus leading the Commission to conclude that PG&E's forecast for 1999 was reasonable - fails the substantial evidence test. TURN points out that ORA's forecast was about 11% lower than PG&E's; moreover, TURN had presented evidence that the appropriate forecast was 23% lower than PG&E's, which the Decision fails to discuss in coming to its conclusion on reasonableness.

PG&E cites three exhibits and two transcript references which it claims supports its requested amount for the GPRP. PG&E does not address the issue of underspending, except to say that its spending level in 1998 may or may not be relevant to the 1999 forecast, for various unspecified reasons. PG&E asserts that the Commission engaged in considered review of the evidence and thoughtful decision-making, and that TURN is once again simply rearguing a case it lost.

We are of the opinion that there is substantial evidence on the record to support granting PG&E's request. PG&E stated several times in its testimony and in cross examination that the program has basically stayed on track despite underspending, which we acknowledge in the Decision. The Decision also states that while the transmission-specific component appears to be slightly ahead of schedule, the distribution-specific component appears to be lagging somewhat. This is supported by the figures presented by PG&E, which indicate that the lag exceeds the acceleration. We are of the view that this showing supports our conclusion that proportionately more spending will have to occur than has occurred in the past, in order to make up the difference. We confirm our finding that PG&E's request, although 30% higher than the average of its spending on the project over the last ten years, is reasonable because PG&E needs to replace an additional 20% of its distribution mileage each year to complete the distribution component of the program on time.

However, our conclusion that PG&E's request of $78 million is reasonable because it is only $5.2 million greater than ORA's forecasted figure (based on 1997 spending) of $72.8 million does not accurately state our position. The two figures are relatively close; however, we believe ORA's figure does not give PG&E enough assurance that financially, they will be able to get the job done. This is true in even greater measure for TURN's proposal, and is why we did not find either ORA's or TURN's figures persuasive. We will modify the Decision to clarify our position.

3. Vegetation Management. D.00-02-046 adopts a total vegetation management expense forecast of $121,070,000 out of $137,837,000 requested. In addition, we have directed PG&E to establish a one-way balancing account to track the difference between authorized and actual spending levels, which we state will ensure that "ratepayers will not be harmed if the estimates we adopt as reasonable for 1999 prove to be imprecise." D.00-02-046, p. 148.

TURN asserts that while a one-way balancing account is better than nothing, "it certainly does not in itself satisfy the Commission's obligation `to ensure that PG&E provides adequate service at just and reasonable rates.'" (TURN App. Rhg, p. 22, citing D.00-02-046, p. 32.) TURN contends that if the amount subject to the Vegetation Management Balancing Account (VMBA) is too high, PG&E's ratepayers would still be paying rates that are neither just nor reasonable; as long as PG&E spends the funds on vegetation management, the ratepayers must pay. PG&E responds to TURN's problems with the VMBA by pointing out that TURN was the party proposing adoption of such a balancing account (see TURN's Opening Brief, p. 22).

TURN then raises two specific issues with regard to the figures we found persuasive in granting PG&E the $121,070,000. TURN first argues that the calculation of trees requiring systematic trimming over the three-year GRC cycle (1999-2001) incorrectly ignores the impact of PG&E's 1998 tree removal efforts through its supplemental tree removal program (see discussion of this program below). TURN maintains the adopted systematic trimming figure, which is based on PG&E's 1997 inventory, does not take into account the 95,000 trees removed in 1998 through PG&E's supplemental program. TURN argues the forecast for systematic trimming over the three-year period should be corrected by the subtraction of the 95,000 trees removed before the forecast period began.[3] PG&E responds that the 95,000 figure was a projection, and did not represent actual removals. PG&E then contends that regardless of whether the figure represents actual or projected removals, we were justified in not subtracting it from the count of trees to be trimmed, because there are many uncertainties controlling how many trees must ultimately be removed.

Secondly, TURN contends we adopted an excessive funding level for PG&E's supplemental tree removal program. D.00-02-046 adopted an outcome which TURN says is consistent with funding this program with $61.2 million over the GRC cycle. But TURN points to testimony by ORA (which in turn relies on a data request response of PG&E) showing that for the three-year cycle, PG&E only forecast spending $52 million. According to TURN, either we have approved funding in excess of the amount PG&E has itself said it will spend, or we have approved recovery of PG&E's 1998 expenditures through an inflated forecast. TURN maintains that either explanation produces rates that are not just and reasonable. After mischaracterizing TURN's argument as one of protesting only the amount funded for the test year, PG&E responds that TURN had acknowledged that PG&E had forecast program costs of $21 million in 1999, and that this evidence alone was sufficient to justify the Decision's outcome.

There is substantial evidence in light of the whole record to support the adopted figure for the total number of systematic trims over the three years of the rate case cycle. Concerning TURN's argument that the number of trees removed in 1998 should have been subtracted from that figure, PG&E's evidence did project that number of removals; however, there is no evidence as to the actual number of trees removed pursuant to the supplemental removal program in 1998. Moreover, PG&E did present testimony concerning the numerous factors which will ultimately determine how many

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[3] TURN also had argued that half the removals in 1999 (i.e.. about 50,000) should also be removed from the trim forecast, but we rejected that argument, stating that such a mid-year adjustment was not appropriate for test-year ratemakmg. D.00-02-046, p. 147.

trees are actually removed in any given year. Thus we have acted within our discretion in not excluding that projected number from the forecasted number of systematic trims.

However, concerning TURN's argument on overfunding the supplemental tree removal program, TURN appears to be correct that PG&E forecast spending $52 million over the three-year rate case cycle. In adopting what will amount to $61.2 million over those three years, we have included dollars that PG&E forecast for 1998, a year not included in the cycle. ORA's Exhibit 81, cited by TURN, stated first that it was somewhat unclear just what PG&E was requesting; PG&E's figures ranged between $63.2 million and $70.15 million (Ex. 81, p. 50, text and n.134). However, when analyzed more carefully, the figures illustrated that PG&E was including in the $63.2 million figure $11.2 million it forecast spending in 1998, when the program was to begin. *Id*., p. 51. We will reduce our adopted figure of $61.2 million (already reduced by $2 million from PG&E's request) by $9.2 million, because it is inappropriate to include forecast expenditures which do not lie within the rate case cycle timeframe. With this change, we conclude there is substantial evidence to support the adopted budget.

Finally, with regard to TURN's protest that the VMBA will not assure that ratepayers are being charged just and reasonable rates, PG&E is correct that TURN itself proposed that we adopt such a mechanism, albeit in the context of the expectation that PG&E would henceforth be subject to performance based ratemaking. It is also true that as long as PG&E in fact spends all that it has been awarded on vegetation management, ratepayers will have to pay for it. However, we continue to believe the VMBA will be helpful in assessing whatever request PG&E makes in its next GRC for vegetation management, and we will not modify it at this time.

4. Meter Reading - Account 902. TURN contends that in approving the entirety of PG&E's requested $71 million in revenues for meter reading, we again misapplied the appropriate standard of proof, incorrectly interpreted record evidence, and inexplicably supplemented the record *sua sponte.*

TURN argues that PG&E failed to show by clear and convincing evidence that it needed twice its currently authorized revenues to maintain adequate meter reading service. TURN claims that this is demonstrated first by the fact that the support PG&E offered to justify its request changed during the course of the proceeding. PG&E began by claiming its request was driven by employee turnover and the loss of experienced meter readers, but then changed its rationale to the implementation of its new accounting system, which it said resulted in 76% of its requested costs being taken out of other FERC accounts and placed into the meter reading account.

PG&E had used this accounting system change to justify other aspects of its requested revenue increase, a case in point being the forecast of gas distribution expenses. In that instance, we rejected PG&E's approach because PG&E had failed to show the dollar impact of shifting certain costs among accounts. (D.00-02-046, pp. 223-224.) However, in the meter reading context, TURN quotes the following language, at page 334 of D.00-02-046:

> We find the evidence supporting this argument [that the accounting changes are responsible for 76% of the increase PG&E seeks] to be convincing. If PG&E is going to rely upon implementation of a new accounting system as grounds for a near doubling of the metering costs reflected in Account 902, it is incumbent upon PG&E to track the changes and demonstrate clearly that the costs transferred to Account 902 have been removed from other specific accounts on a dollar-for-dollar basis. However, it is apparent that the 1994 data which was the basis for our decision in the 1996 GRC did not include meter reading labor or supervision booked at that time to Account 901. It is sufficient in this case for the witness to verify in a general way that the appropriate transfers have been made.

TURN argues that PG&E failed to produce clear and convincing evidence that the accounting change had the asserted impact on meter reading expenses, and thus we did not have substantial evidence on which to base our authorization of PG&E's request. PG&E responds that we found PG&E's witness' verification to be "sufficient in this case;" in part because of the state of the data on this issue in the 1996 GRC. Also, PG&E argues it is the Commission's job to assess the credibility of witnesses and the probative value of their testimony, which the Commission did.

TURN further quotes the Decision, on pages 334-335:

> Weil's analysis provides another reason to question PG&E's claim. PG&E's request is 15% higher than recorded spending in 1996, a year when the SAP system [the new accounting system] was in place and the redefinition of accounts had been completed. This is not an unreasonable forecast given the institution of direct access and the different demands it places on the customer information and meter reading function.

TURN argues our reference to the customer information demands of direct access is not appropriate, since all that is involved here is the meter reading function. TURN also argues the record shows that all PG&E was relying on was existing manual methods of meter reading; its cost estimates ignore the effects of advanced technology and direct access. Finally, TURN asserts that any costs incurred by PG&E relating to metering activities associated with direct access are being recovered by PG&E through its section 376 settlement and the Electric Restructuring Cost Account mechanism created therein (discussed at pages 474-475 of the Decision). Any additional costs that do exist because of direct access do not, according to TURN, provide a basis for increasing PG&E's meter reading revenue requirement. PG&E does not respond to these latter two objections.

TURN finally contends we inappropriately add more justifications for the increase which not only were not part of PG&E's case, but are incorrect. The Decision cites the increasingly complex transactions involved in presenting a bill, particularly in the direct access context, and additional costs associated with the Quality Assurance Program proposed by ORA and adopted by the Decision, as additional reasons why PG&E's forecast "may be reasonable." (D.00-02-046, p. 335.) TURN argues that costs of bill presentment are not included in Account 902, and that the Quality Assurance Standards we refer to would not have even an indirect impact on meter reading expenses.

PG&E responds that because the Decision finds PG&E's case "convincing" before discussing the other two justifications, it is questionable whether the Decision really relies on these factors. Moreover, PG&E contends the inferences we draw to the impact of direct access are reasonably derived from the extensive evidence on the record concerning electric restructuring.

Upon further review of the record, we are of the view that PG&E's evidence has not adequately substantiated its request. Not only did PG&E fail to provide specific documentation of its asserted accounting changes, as the Decision states it must; there is no support for the propositions that increases in the complexity of bill presentment and implementation of direct access have affected meter reading costs at all. When closely examined, the only aspect of our rationale that survives scrutiny is the fact that the figures upon which the 1996 award was based apparently did not include costs of labor and supervision, which had been included in Account 901 at that time. However, specific documentation of the figures involved was lacking. PG&E's rebuttal witness stated that she had personally verified that the old accounts were no longer being charged for these costs, but she had not thoroughly verified the amounts by which the old accounts had been reduced due to the accounting change.

Under these circumstances, we do not find PG&E's case convincing. We will return to the approach of the Proposed Decision and, for the reasons stated therein and above, we will adopt ORA's forecasts of $34.7 million and $28.2 million for the electric and gas departments respectively, for a total of $62.9 million. We will grant rehearing to modify D.00-02-046 consistent with this discussion.

5. Accounts Services Funding. PG&E uses this category of funds for what it terms basic customer service activities it provides to commercial, industrial and agricultural (CIA) customers. TURN argues our adoption of an increase in $20 million (for a total of $31.7 million) in funds available to PG&E for these activities is legal error, because there is no clear and convincing evidence that would justify this increase. TURN contends first that as with meter reading, we have once again misapplied the appropriate evidentiary standard, granting PG&E the substantial increase it asked for based on PG &E's generalized claim that its accounting change justifies its request in this instance, without requiring PG&E to provide specific evidentiary support for its request. According to TURN, while PG&E asserted that the additional $20 million did not reflect new spending levels but simply represented existing spending levels shifted from one account to another, PG&E made no showing that the change actually resulted in the dollar impacts PG&E claims. Thus we had no way of verifying PG&E's assertions. As with most of the other issues it raises, TURN quotes language in the Decision indicating we acknowledged PG&E's failure, but nevertheless adopted PG&E's request. TURN contends this is legal error.

TURN also alleges that even if PG&E had shown that the accounting change resulted in a substantial increase in the forecast for Accounts Services spending in 1999, the record does not support funding in the amount of $31.7 million. Given that we agreed with PG&E that Accounts Services work is similar to the customer services that call center representatives provide to residential customers, TURN claims there is no record support for a per-customer allotment of $43.30 for each of PG&E's commercial, industrial and agricultural customers, while only $10.20 is allocated to each residential customer. [4]

Finally, TURN objects that we generally ignored intervenor evidence. PG&E's request was opposed in part, according to TURN, because it appeared to be merely a repackaging and renaming of services, largely related to marketing programs designed to retain customers, that were specifically excluded from rate recovery in PG&E's 1996 GRC. See D.95-12-055, 63 CPUC 2d 570, 598-599. While we acknowledged this as a "legitimate concern," TURN believes we rejected this concern

[4] TURN derives these figures by calculating the per-customer allotment from the Commission's approval of a call center expense of $46.8 million to serve PG&E's customers, *assuming* that only residential customers will be served by the call center ($10.20 per residential customer). TURN then divides the $31.7 million approved for Accounts Services by the number of PG&E's CIA customers, 732,000, which results in an allocation of $43.30 per CIA customer.

because it was a "bald assertion" that "does not substitute for some analysis and evidence. It is not incumbent upon PG&E to prove the negative proposition that it does not engage in previously disallowed activities in addition to its sworn testimony that it does not." D.00-02-046, pp. 342-343. TURN contends that this places the burden of proof on the wrong parties - the intervenors - rather than on PG&E, who should not be allowed merely to assert, without support, that it would be funding activities sufficiently different from those excluded from funding in the 1996 GRC. TURN argues that the only specific evidence PG&E offered on this point was through its witness Lytton, who testified that PG&E no longer sends industry experts to trade show functions, which TURN contends is insufficient to show that PG&E is no longer performing the excluded activities.

Moreover, TURN argues that PG&E itself provided evidence supporting the intervenors' claim that the activities were not mutually exclusive. TURN points to rebuttal evidence presented by PG&E showing that at least in part, the same types of expenses eliminated in the 1996 GRC decision were included in the instant case. PG&E's witness stated that after its application for rehearing on the issue was rejected, PG&E continued to fund these activities for its CIA customers (Ex. 27, p. 8-23.).[5] Contending that level of spending was not sustainable without ratepayer contribution, PG&E then asked for it to be funded again in the instant case.

As with meter reading above, our review shows that TURN is correct that PG&E presented no evidence of the specifics of the accounting change, but merely made a general assertion that the change in booking various expenses from Account 912 to Account 903 required the increase PG&E requested. Moreover, despite the Decision's

[5] Specifically, the Commission rejected funding in 1996 for PG&E's Quality Contact Program, which was designed to "assist [CIA] customers with regulatory, safety and environmental information, and identify local business issues for customers." D.95-12-055, 63 CPUC 2d 570, 578. The Commission denied funding for this program because while it provided customer assistance, it also served as a marketing tool to promote PG&E's business interests for that subset of customers, not the general body of ratepayers. *Id.*; see also D.98-12-096, 1998 Cal. PUC LEXIS 901, which denied rehearing on this issue. We found the program was designed to retain PG&E's market share in competitive markets, and was appropriately funded by PG&E's shareholders or the customers who benefited, not PG&E's general body of ratepayers.

assertion that PG&E persuaded us that providing basic services to CIA customers has increased in complexity, we find that PG&E presented no evidence on specifically why it should cost so much more to provide these services to CIA customers than to residential customers. While it might well be that some additional costs are legitimate for the commercial/industrial/agricultural sectors, PG&E has not demonstrated this to be true, at least on the scale it has requested.

TURN is also correct that PG&E's showing on whether the increase would fund activities previously disallowed in its 1996 GRC (and confirmed in D.98-12-096, which denied PG&E's application for rehearing on this issue) was a mere assertion that it would not, supported by only one example, that of discontinuing participation in trade shows. It is not appropriate to turn the tables back on the other parties to provide more specific evidence, since the burden of persuading the Commission rests with PG&E throughout this case. TURN also correctly cites to references PG&E itself made to its need to try once again to get Commission authorization for these expenses.

In sum, while PG&E did make general assertions, it did not answer the underlying questions. We conclude that PG&E did not meet its burden of showing by clear and convincing evidence that it needed the increase, thus there is not substantial evidence in light of the whole record providing that support. As with meter reading, we will return to the approach followed by the Proposed Decision, and will disallow the $20 million the intervenors argued had not been sufficiently justified. We will grant rehearing to modify D.00-02-046 consistent with the above discussion.

6. CIS (Customer Information System) Accounts - Capital Additions. TURN maintains that we erred in not reducing the authorized capital additions funding for PG&E's billing, reporting and customer data system (together referred to as the Customer Information System or CIS) accounts to reflect past ratepayer contribution to failed CIS projects for which ratepayers received no benefit. TURN's position is that ratepayers should not have to pay twice for the same projects.

PG&E received funding for a rewrite of its CIS in its 1990 GRC. TURN claims the record shows, and that we agree (see D.00-02-046, pp. 401-402), that PG&E

has spent, and ratepayers have funded, $55-60 million on the CIS rewrite and other CIS projects over the last three GRC cycles. These projects have all been aborted along the way. However, this does not mean that there has been no benefit to ratepayers from PG&E's efforts. TURN points out that even if PG&E's testimony on ratepayer benefits is accepted without question, as was done by the PD, ratepayer benefits are only $36 million, and thus $20 million must be subtracted from PG&E's capital additions request. The Decision accepts a range of between $26.6 and $55-60 million in ratepayer contributions, and states that ratepayers have received "a rough equivalence" in benefits.

The crux of this matter is the interpretation of D.89-12-057, PG&E's 1990 GRC decision (34 CPUC 2d 199), which initially funded the CIS rewrite project. D.00-02-046 surmises that it is unclear whether the portion of the funding already embedded in rates ($3.2 million annually) would be used not only to fund the rewrite project, but also to continue the operation of the existing CIS while the rewrite was in progress. If that is the case, it would mean that ratepayers should not be credited with having paid the embedded amount toward a CIS rewrite. TURN argues, however, that the matter is not unclear, and that no funds associated with the rewrite project were used for continuing operation and maintenance of the existing CIS. TURN cites PG&E's CIS feasibility report which was the basis for the original rewrite funding approved in the 1990 GRC, which is an exhibit in the instant case. (Ex. 318, Ch. III, Ex. III-11.) TURN contends that the report clearly shows that the funds necessary to maintain the existing CIS ($12.2 million) were not part of the costs that were to be redirected to the CIS rewrite project ($21.5 million). TURN argues that PG&E nowhere refuted that evidence, and it is appropriate to credit ratepayers with having paid that embedded amount as part of the costs of the rewrite effort. Thus, TURN argues, approximately $20 million must be disallowed from PG&E's request in this case.

PG&E responds that the issue is whether we committed error in finding a range of ratepayer funding with a lower bound of $27 million, rather than solely the $55-60 million TURN claims ratepayers funded. PG&E says it demonstrated, through citation of specific Commission decisions and adopted expenditures, that ratepayers paid only $26.6 million in rates for incremental CIS project expenditures adopted by the Commission from 1990-1998. According to PG&E, the Decision concluded that $55-$60 million was the upper bound of the range of estimated capital spending on a new CIS system - not the entire range. Thus PG&E contends we were justified in finding a "rough equivalence" between CIS ratepayer funding of between $27 million and $55-$60 million, and CIS ratepayer benefits of $36 million, and in denying the $20 million disallowance.

TURN is correct that the feasibility report which formed the basis for PG&E's showing in the 1990 GRC and which in turn supported the funding adopted therein, separates out the costs of maintaining the existing CIS and the costs of the rewrite. However, it is not clear from reading the 1990 GRC decision just what the Commission understood the situation to be. That decision referred to the feasibility report, and stated: "Of the total [cost of the rewrite, $44,290,000], DH&S [PG&E's consultant] estimates that $21,540,000 can be met by redirecting existing resources to the rewrite effort. Thus, the incremental cost of replacement is $22,750,000." D.89-12-057, 34 CPUC 2d 199, 241. This does not clarify whether the embedded costs represented by the redirection of existing resources were all used in the CIS rewrite effort, or if those people continued to work on CIS maintenance as well, as PG&E claims. However, we think it unlikely that PG&E could have gotten over $20 million of work done by using employees who were continuing to work on their old jobs, as well as new ones. Iii fact, PG&E's own witness testified that while he had no firsthand knowledge of the details of the redirection of employees, it was his opinion that it would be "extremely unlikely" that the employees doing CIS maintenance could be shifted to the CIS rewrite and still have the CIS system continue to run. (Brooks, 35 RT 3975-3976.)

As stated earlier, the Decision adopts a range of ratepayer contribution, assuming that ratepayers funded between $27 million and $55-60 million in CIS project costs over the 9-year period from 1989-1998. It then concludes that there is a "rough equivalence" between ratepayer contributions somewhere in that range, and ratepayer benefits of $36 million. However, our reconsideration of this issue shows us that the evidence is not clear; thus there is not substantial evidence in light of the whole record supporting our original determination. A more plausible conclusion, based on the feasibility study referenced above and the testimony of PG&E's own witness, is that at least some of the embedded costs relating to the redirected resources had to be going into the CIS rewrite and not into CIS maintenance.

It is appropriate to add at least some of those costs to the amount ratepayers have already paid for CIS rewrite projects, which they should not have to pay again. The issue is just how much. Since the record does not set this forth clearly, we will compromise by splitting the difference. This means that we will consider ratepayers to have funded $43.2 million worth ($28.8 million in incremental costs + $14.4 million, which is half of the embedded costs). The record shows they have received benefits of $36 million; thus we will reduce PG&E's request by $7.2 million. We note that PG&E itself proposed this very solution as an alternative to the PD's inclusion of 100% of the embedded costs, which PG&E contended was not supported by the record. (See PG&E Comments on the ALJ's Proposed Decision, p. 28, n. 30.)

We will grant rehearing in order to modify the Decision to make this change.

II. WEIL.

A. <u>Flood Studies - Account 537</u>. The Decision adopted PG&E's estimate of $200,000 in expenses in 1999 for flood studies that will promote dam safety. D.00-02046, pp. 111-112. In approving the study costs, we were persuaded that dam safety spending should not await completion of divestiture or other market valuation of PG&E's hydroelectric facilities. Weil argues that while there is no error in this logic, granting the requested revenue requirement constitutes legal error because there is no credible basis for the authorized level of expenses. According to Weil, PG&E presented no evidence beyond a statement that it relied on judgment in estimating the cost to perform the flood studies. Weil argues that there is no evidence regarding the qualifications of the persons that made the estimates, no record of the costs of similar studies, and no work papers to support the estimate. Allowing $200,000 in revenue requirement for five, years based solely on judgment does not meet the substantial evidence test, according to Weil.

PG&E counters that there was ample record evidence supporting PG&E's $200,000 estimate. PG&E points to its professional judgment and the pre-publication copy of the National Weather Service's Hydrometeorological Report No. 58, Probable Maximum Precipitation for California, as the basis for this level of funding. (Ex. 18, p. 5C-R-2; Ex. 27, pp. 4-7 to 4-8; Ex. 452, p. 44.) PG&E's March update on expense estimates states the following concerning flood studies:

> Since preparation of the Application, the National Weather Service (NWS) issued revised rainfall intensity tabulations for use in determining flows for PG&E's flood studies. These flood studies form the basis for spillway adequacy determinations at PG&E's dams. The new data must be reviewed and changes from the previous version determined. If the rainfall intensity has changed, then that change must be incorporated into an updated flood study for review by FERC and others. PG&E anticipates this work to follow the current FERC Part 12 independent reviews of safety for PG&E's dams, which follow a five year cycle. The estimated cost to do the work is $200,000 per year for five years -- $150,000 in contracts and $50,000 in PG&E labor per year. Since the $50,000 in PG&E labor is not incremental, the total adjustment to the 1999 forecast is $150,000.

PG&E's March Update to Electric Report on Operations - Capital and Expense Estimates (Exhibit 18, p. 5C-R-2).

PG&E's rebuttal testimony (Exhibit 27, pp. 4-7, 4-8) includes the same information as above, and adds that PG&E used its professional judgment to estimate the costs. On cross examination, Mr. Bosscawen, PG&E's witness on this matter, testified that he went to the PG&E engineers responsible for performing this work to obtain a cost estimate. (18 RT 1548.)

We are of the view that the NWS Hydrometeorological Report and PG&E's testimony , as to its professional judgment constitute substantial evidence supporting PG&E's flood studies expense estimate. Weil has not shown that our decision to rely on PG&E's professional judgment in this instance was either unreasonable or imprudent. In this case, we have acknowledged that we are generally leery of forecasts based solely on judgment. However, after considering all the relevant factors, we were persuaded that this was a dam safety issue and that the costs were reasonable. We remain of this view. As such, Weil has not demonstrated legal error in the Decision.

B. FERC License Conditions - Account 539. Weil contends the Commission commits both factual and legal error in authorizing $5.56 million of Account 539 expenses, half of PG&E's request, for compliance with FERC relicensing conditions at five hydroelectric plants. Weil asserts that the timing of FERC actions is crucial to this issue, and that there was no substantial evidence that any of the five pending FERC licenses was issued prior to or during the test year. Weil contends this is not a subjective issue that might be illuminated by professional judgment of witnesses, but rather, a factual issue that "could have and should have been resolved by introduction of FERC decisions that prove that licensing conditions were imposed during the test year." (Weil App. Rhg, p. 3.) Weil contends that our finding regarding the probability that PG&E will incur some expenses in 1999 constitutes factual error, because there simply are no facts on the subject in the record of this case. Weil asks that either the $5.56 million be removed from the test year revenue requirement, or that rehearing be granted to determine just what FERC orders were actually issued prior to the end of 1999.

PG&E responds that Weil's fundamental flaw is that he does not acknowledge that the record closed in 1998, thus the evidence could only address whether any FERC decisions had been issued before that time, or whether any probably would be issued before the end of test year 1999. PG&E points out that although there was no evidence that any FERC decisions had actually been issued before the record closed in 1998, after reviewing the evidence we concluded that it was *probable* that

PG&E would incur some expenses for license conditions in the test year and authorized half of PG&E's requested amount.

We have not committed legal error by having authorized a portion of PG&E's request based on the probability that some expenses would be incurred during the test year. We have obviously taken a prudent course here, and the discussion is quite candid about that. However, we will make a minor modification to our discussion to set forth our reasoning more clearly.

C. Past Maintenance Practices. On the subject of PG&E's electric maintenance practices in 1996 and its impact on test year 1999 forecasting, we make the following findings:

> An unquantified portion of PG&E's increased electric distribution system maintenance spending in 1996 can be attributed to earlier deficient or deferred maintenance, for which ratepayers should not be responsible; and another unquantified portion of the increased spending was a reasonable and appropriate response by PG&E for which PG&E should be recompensed by ratepayers.

(D.00-02-046, Finding of Fact 43). Substantially the same language is found in discussion at page 137 of the Decision.

Weil claims that this language suggests that PG&E should recover its reasonable and appropriate 1996 costs (exclusive of costs due to deficient or deferred maintenance) in 1999. According to Weil, any direct or indirect payment from ratepayers to PG&E in 1999 for spending in 1996 would constitute illegal retroactive ratemaking. Weil acknowledges that the language could mean that reasonable and prudent spending in 1996 can form a basis for estimation of test year expenses; however, he recommends that the language in Finding of Fact No. 43 be revised to read:

> An unquantified portion of PG&E's increased electric distribution system maintenance spending in 1996 can be attributed to earlier deficient or deferred maintenance and should not form a basis for test year 1999 authorized revenue requirements; and another unquantified portion of the increased spending was a reasonable and appropriate response

> by PG&E that may form a valid basis for test year 1999 authorized revenue requirements.

Weil's view of the meaning of the prohibition against retroactive ratemaking is generally correct, and we agree that if Finding of Fact 43 meant that ratepayers could now recover costs incurred in 1996, it would constitute legal error. However, a review of the lengthy discussion regarding the issues involved in choosing a forecasting methodology indicates that this is not what Finding of Fact 43 means. Rather, it means what Weil's rewording says it means - that some unquantified portion of 1996 electric distribution system maintenance spending may appropriately form a valid basis for forecasting test year 1999 expenses, and some other unquantified portion of that spending may not. While we do not consider rewording of Finding of Fact 43 to be legally necessary, we will make Weil's suggested change for clarification purposes.

D. Uncollectibles - Account 904. Weil contends we made a factual error regarding the uncollectibles factor. He maintains that discussion in the Decision and a related finding of fact show that we intended to adopt an uncollectibles factor of 0.00267, but that the results of operations tables appended to the Decision rely on a factor of 0.00337.

PG&E counters that neither the discussion nor the finding specifies which of Weil's recommendations is being adopted, and that the Results of Operations table makes clear that we intended to adopt his secondary recommendation. PG&E asserts that this is supported by the fact that his secondary recommendation was the only one that PG&E agreed with.

The discussion and Finding of Fact 224 support Weil on this issue. Both the discussion and the finding refer to "the recorded uncollectible factor for 1997," which was Weil's primary recommendation. The Results of Operations table will be changed accordingly.

E. Demonstration and Selling Expenses -Account 912. Weil claims that the Decision contains a minor factual error in discussion of demonstration and selling expenses in Account 912. Weil argues that in his showing he criticized PG&E's costeffectiveness analysis because, in part, it considered only the utility perspective rather than ratepayer *and societal* perspectives. The Decision states: “As Weil has demonstrated, [PG&E's analysis] considers the utility rather than the ratepayer perspective...." (D.00-02-046, p. 349; Finding of Fact 226.) Well requests correction of this error. PG&E counters that the Decision stated what Weil "has demonstrated," not necessarily what Weil *sought to demonstrate* in his cross-examination and argument.

The Decision's omission of the words "and societal" was inadvertent. We hereby acknowledge that Weil's analysis included both ratepayer and societal perspectives.

F. <u>Attrition</u>. Weil argues we have committed legal error in two respects regarding our authorization to PG&E to file an attrition application for 2001. First, Weil quotes from page 54 of the Decision, which states that the Commission grants an attrition adjustment "because we find the forecasted activity levels, labor cost escalations and capital investment forecast to be reasonable." He contends this statement constitutes legal error because there is no substantial evidence to support it. If this finding refers to the test year, Weil contends it is in error because attrition year forecasts, not test year forecasts, determine attrition year revenue requirements. If it refers to the attrition year, while PG&E did put in evidence on estimates of a 2001 attrition increase, the figures in PG&E's direct testimony are lower than the increases in the comparison exhibit (cf. Ex. 10, pp. 1-2 - 1-8, with Ex. 474, the comparison exhibit, pp. C-2 - C-7), and Weil contends there is little support for either set of numbers.

Secondly, the Decision at page 473 states:

> The attrition year 2001 proposal is granted to the extent that PG&E may file for an attrition year 2001 adjustment as proposed, with the caveat that the ratebase component may be modified to reflect the results of the audit of 1999 distribution capital spending.

Weil argues that our authorization to PG&E to file for an attrition year adjustment "as proposed" is error because it is vague and ambiguous. Weil says that PG&E's proposal was for both 2000 and 2001, and was based on PG&E's request and not the adopted revenue requirement. Weil poses several questions about just what the phrase “as proposed” might mean in this context, and argues that if any attrition adjustment remains in the Decision, this phrase should be deleted.

PG&E responds that with regard to Weil's first point on the reasonableness "finding," PG&E reads that as referring to the need for an attrition adjustment in 2001 in accordance with PG&E's proposed mechanism and in the context of PG&E's having to undergo another GRC in 2002, PG&E does not read it to mean that specific forecasts of activity levels, labor cost escalations, and capital investment in 2001 had been presented and found to be reasonable. With regard to Weil's problems with the phrase "as proposed" on page 473, PG&E interprets it to mean that PG&E may file an application for an attrition rate adjustment (ARA) in 2001 by applying PG&E's proposed ARA mechanism to PG&E's authorized revenues (PG&E notes that this is the ARA mechanism substantially defined in D.85-12-076 and D.92-12-057). PG&E claims that the Decision thus found against parties, including Weil, that had opposed an attrition adjustment in its entirety, and impliedly found against Weil's position that PG&E's ARA proposal be altered if any adjustment were authorized.

We reject Weil's claims of legal error. We have merely authorized PG&E to file an application for an attrition adjustment; we have not authorized any adjustment at this time. Weil does raise some valid concerns about the lack of clarity of the discussion. From a practical standpoint, these concerns are moot, since PG&E has since filed its attrition application (Application 00-07-043) and it is now being considered. However, in the interests of clarifying our intent, we will modify the discussion of attrition in several respects. We note again that we will resolve TURN's and Weil's January 11, 2001 joint petition to modify D.00-02-046 relative to the attrition adjustment in a separate order.

CONCLUSION

Given the situation we all face today, it is with reluctance that we make any changes to the determinations we made in D.00-02-046. However, regardless of the events of the past several months, PG&E still carries the burden of showing by clear and convincing evidence that the revenue increases it has sought are justified. It is only in those instances where PG&E's showing simply does not satisfy this burden, as demonstrated by TURN and confirmed by our further review of the record, that we make changes today. After a thorough review of this voluminous record, we conclude that we must reduce the capital increases we approved in D.00-02-046 by $24.8 million, and must reduce the expense increases we approved by $37.3 million. In addition, some portion of PG&E's estimated $171 million in capital spending for 1998 will be subject to rehearing.

Therefore, **IT IS ORDERED** that rehearing of Decision 00-02-046 is granted in order to modify this Decision as follows.

1. The discussion and findings on attrition are modified as follows:

a. The first full paragraph on page 54 is modified to read:

> PG&E has requested an attrition allowance for Attrition Years 2000 and 2001. For illustrative purposes, based on PG&E's requested revenue requirement, the amount requested for Attrition Year 2000 is $148 million, and the amount requested for Attrition Year 2001 is $121 million. (These amounts have been adjusted somewhat downward in the comparison exhibit.) These amounts are predicated on changes in activity levels, capital investment, escalation of labor cost and escalation of nonlabor cost. Subject to reporting requirements as detailed below, and subject to the results of the Commission's annual cost of capital proceedings for the Years 2000 and 2001, we will allow PG&E to file an application for an attrition adjustment for Attrition Year 2001. We do not at this time find any specific forecasts of activity levels, labor and nonlabor cost escalations, and capital investment for 2001 to be reasonable. We do find that in the context of the regulatory setting we adopt in today's decision, i.e., that PG&E will not proceed directly to PBR but will undergo at least one more GRC in 2002, it is reasonable to authorize PG&E to file for an attrition adjustment for 2001. As forecast by PG&E, its attrition adjustment for Year 2001 represents an increase in authorized distribution revenues of approximately 5%, predicated on its filing an application.

b. The fourth sentence in the second paragraph on page 54 is modified to read:

> According to the timing established by the Rate Case Plan, PG&E should file an application for the attrition allowance authorized here, to provide a vehicle for enabling us to determine whether the illustrative costs set forth in PG&E's testimony and the comparison exhibit in fact reflect PG&E's normal operations.

c. The last paragraph on page 472, which continues on page 473, is modified to read:

> Since we have concluded that a test year 2002 GRC is necessary for PG&E before PBR can be appropriately and confidently implemented, an ARA mechanism is not precluded by the foregoing decisions. (See Chapter 12.2 below.) Giving weight to the concern that there not be a disincentive for efficient management created by an ARA and mindful that an audit of test year 1999 capital additions will give us insight into the forces governing PG&E's ratebase, we will approve PG&E's proposed attrition mechanism, but only in part. The attrition year 2000 proposal is denied. The attrition year 2001 proposal is granted to the extent that PG&E may file for an attrition year 2001 adjustment as proposed; i.e., PG&E may apply its proposed ARA mechanism to its authorized revenue requirements. PG&E's proposal will, of course, be subject to all of the reporting requirements detailed above, and is subject to the caveat that the ratebase component may be modified to reflect the results of the audit of 1999 distribution capital.

2. The last full paragraph on page 115 is modified to read:

> However, even though PG&E has not fully justified its forecast, it is probable that PG&E will incur some expenses for license conditions in the test year. We find that it is reasonable to include some level of license condition costs in the test year forecast. Moreover, we are not inclined to deny these expenses on the basis of PG&E's plans for divestiture of its hydroelectric assets. Until such divestiture or other disposition of the hydroelectric assets is final, it is reasonable and prudent for PG&E to take action to comply with any conditions imposed by FERC. Accordingly, we authorize PG&E to reflect one-half of its forecast of $11.11 million in

> its revenue requirement. This is a liberal allowance in light of the uncertainties and tenuous justification of the expenses forecast by PG&E for the Rock Creek-Cresta project, which accounts for a large share of the total forecast. Based on the foregoing, PG&E's forecast for hydroelectric license condition costs should be reduced by $5.555 million.

3. The last paragraph on page 152 is broken into two paragraphs and modified to read:

> As discussed earlier, the tree inventor)' data base forms the basis for PG&E's supplemental tree removal program. We note that the changes in the scope of this program from the time that PG&E prepared its application to the time it filed its rebuttal testimony may be associated with the evolving nature of the new data base. Although we are not persuaded by PG&E's rebuttal testimony that none of this supplemental activity is associated with deferred activity in the past, we are unable to quantify the impact of inappropriately deferred tree trimming and tree removals. Removal of some fast-growing trees in PG&E's service territory may be a cost-effective and worthwhile project for PG&E to undertake, and with one modification we approve the requested level of funding. We will approve $52 million for the three-year rate case cycle, which is the amount PG&E has forecast for the entire three years. (See Ex. 81, p. 51, which relies on a data request response of PG&E.) This is, of course, subject to the one-way balancing account treatment established for tree trimming.
>
> However, we note that PG&E has not reconciled this request for incremental funding in 1999 with activities that were funded by section 368(e) in 1997 and 1998. That issue is before us in A.99-03-039, the investigation of spending of section 368(e) funds. Further, the Consumer Services Division is conducting a five-year audit of vegetation management activities, pursuant to settlement of the Rough-and-Ready Fire investigation. These regulatory activities will give us and PG&E an accurate factual basis on which to proceed in the future.

4. In the table entitled Adopted 1999 Vegetation Management Forecast on page 153, the amount for Tree Removal is changed from $20,384 to $17,333.

5. The first paragraph on page 186 is modified to read:

> As we previously observed, even as PG&E was developing this reliability-oriented spending plan, it was operating within a milieu of enhanced incentives to augment spending as the advent of industry restructuring, competition, and PBR loomed near. Improved reliability performance is clearly desirable, and may be economically justified to the extent that significant new expenditures are involved. Accordingly, and consistent with our "statutory reliability" determination in D.96-09-045, our focus in this GRC is on approving investments that are required for continued maintenance of historical levels of reliability, responding to customer and load growth, and performing work required by others.

6. The discussion beginning with the last paragraph on page 188 (which continues onto page 189) and ending with the last paragraph on page 191 is modified to read:

> Nevertheless, we think that parties have raised substantial doubts about PG&E's requested capital spending level in addition to the reliability and growth issues discussed above. A good example is PG&E's spending on emergency projects. In a major departure from its practice of the previous nine years, when it spent less than $1 million in total for emergency capacity projects, PG&E spent $37 million on such projects in 1997 alone. It seeks approval for $55 million in emergency capital additions for the three years at issue in this GRC. While PG&E's spending on emergency capacity projects will yield improved reliability levels, PG&E has not provided economic justification for such a dramatic and costly change in the application of emergency planning criteria than existed before 1997. Even when the criteria were finally invoked in 1997 after years of near-neglect, they were not fully applied. This lends credence to the allegation that PG&E may have installed distribution capacity before it is needed, if it is needed at all.

> We share several other concerns that were raised by the opposing parties. The installation of 1,300 MW of capacity in 1997 is poorly explained by the rate of customer growth at that time. Peak loads in a significant minority of DPAs are well below capacity, and there is a history of PG&E overestimating capacity needs in a majority of DPA forecasts. Moreover, PG&E's temperature adjustments have been based on statistical methods which lack testing for statistical

significance. PG&E's trend line adjustments appear to create an upward bias in load forecasts, and in certain cases the adjustments were applied incorrectly. PG&E also included block load additions in trend line forecasts, creating an upward bias towards capacity additions. Evidence that PG&E would likely spend $140 million less on distribution investments in 1998 than its request for 1999 also supports the contention that PG&E can provide adequate service with a smaller level of distribution investments. PG&E's claim that it conducted a comprehensive bottoms up/top down forecasting effort may be overstated with respect to projects under $1 million, yet those projects account for much of the estimated capital spending.

Thus PG&E used distribution system planning methods that favored installation of new capacity, gave less attention to potentially more cost-effective alternatives to new capacity, and in some cases did not apply its own planning criteria. There is evidence that PG&E's substation utilization has been in line with, and possibly greater than, traditional utility industry practice, although there is countervailing evidence that PG&E's planning processes were biased towards installation of more capacity than is needed, or making installations earlier than needed.

The magnitude of PG&E's proposed increase in capital spending must be understood in light of the company's heightened awareness of system needs in the wake of the 1995 storms, the need to maintain historical reliability levels and meet other regulatory requirements, system growth, or the ability to respond to requests of others in accordance with tariff rules. Further understanding comes with the recognition that PG&E's forecast of capital spending was developed under a policy of making significant improvements in the reliability of the system, at a time when Section 368(e) funds were available, PBR regulation loomed near, and it was becoming more apparent that competitive forces may be making inroads into the distribution services industry. Despite the expertise behind it, we are not completely satisfied with the process used by PG&E and the resulting estimates of capital expenditures which it has include in its GRC request. Forecasting mistakes that were acknowledged by PG&E (for example, PG&E mistakenly categorized projects as over $1 million, and it failed to include the labor component of purchased meters) add to our discomfort with its process.

PG&E has in effect presented us with a cost-plus budget that comports well with the legislative requirement that utilities provide adequate service. However, increases in distribution capital spending, while justified to accommodate customer and load growth, must also take into account the accompanying requirement that such service be provided at reasonable rates. We will make several reductions to PG&E's request at this time, but more importantly, the concerns alluded to above compel us to provide for a means of limiting the possible effect of forecast error and upward bias in planning and construction criteria. Before determining the reasonable level of capital expenditures to be included in rates, we evaluate the other parties' forecast recommendations.

7. The discussion beginning with the last paragraph on page 197, through the first paragraph on page 199, is modified to read:

Third, PG&E disputes TURN's proposed $40 million disallowance associated with MWC 17 (Emergency Response). Emergency response work is performed when equipment fails suddenly due to damage from vehicles, trees, weather, animals, birds, and other reasons. PG&E projected a 1998 cost based on $3,400 per outage multiplied by an estimate of 15, 589 outages plus an allowance of $5 million for substation failures. This yielded a total of $58 million. PG&E included an additional $25 million which, according to PG&E's rebuttal testimony, is managed centrally to accommodate major events and unusual events. TURN found that the base level of $3,400 per outage times the number of outages predicts actual 1996 spending of $55 million quite well, but notes that 1997 spending rose to $92.9 million with a smaller number of outages. TURN finds that the extra $25 million is not required to be spent on a consistent basis, and recommends that PG&E's GRC primary spending requests of $82.6 million for 1998 and $76.7 million for 1999 be reduced to $65 million in 1998 and $63 million in 1999. TURN notes that its recommendation results in reductions in authorized spending of $21.6 million in 1998 and $19.7 million in 1999.

PG&E notes that its forecast for MWC-17 in 1998 reflects a 10.8% decrease from 1997 recorded and the 1999 forecast reflects a 16.1 % decrease from 1997. PG&E believes that this shows its forecast is appropriate. However, as TURN points out, PG&E spent almost $93 million in 1997 after spending $55 million in 1996. PG&E has not shown that its proposed spending for 1998 and 1999 is reasonable by virtue of reference to the high level of spending in 1997, nor has it otherwise provided adequate justification for the increased level of spending. We will reduce the authorized spending for both 1998 and 1999 to reflect TURN's concern.

Fourth, TURN recommends a reduction of $60 million associated with new business ($56 million) and meters ($4 million). The former reduction reflects TURN's adjustment of the number of added customers for consistency with PG&E's forecast of customers in the sales forecast as well as what TURN states to be different unit costs. PG&E draws a distinction between the number of customers used in the sales forecast for estimating revenue at present rates and the number of customers used for estimating capital costs of connecting new customers. PG&E maintains that the former, which is developed by counting the number of new bills in a year, cannot be used for the latter purpose. PG&E notes that several new connections may be associated with a single bill. Further, the composition, load characteristics and locations of new customers are not captured in the "net new customers" used for the sales forecast, although these are factors that will drive new capital investment. On balance, we find PG&E's position more persuasive than TURN's on this point. Concerning unit costs, we find TURN's recommended unit cost reductions to be reasonable since they reflect PG&E's own internal projections. We also find, however, that PG&E used the same unit costs as did TURN. (See PG&E Comments to ALJ's Proposed Decision, p. 13; see also Ex. 369, p. 64; Ex. 28, Ch. 3, Attach. E-0147.)

8. The last paragraph on page 199 is modified to read:

We find that the components of TURN's recommended capital spending reduction of $350 million are not fully supported by the record, with the exception of MWC 17 and New Business, as discussed above, and MWC-6 as adjusted, discussed below.

9. The table on page 203 is modified to include a $17.6 million reduction for MWC 17 for 1998. This results in a 3-year reduction for MWC 17 of $37.3 million, a total

for 1998 plant additions of $815.2 million, and a grand total for plant additions of $2,277.0 million.

10. The last paragraph on page 231 is modified to read:

> The persistence of this pattern of underspending combined with PG&E's ability to keep the program generally on schedule leads us to suspect that its forecast may be higher than appropriate. However, because the record shows that the distribution line portion of the program is lagging somewhat, we are within our discretion in finding PG&E's forecast for 1999 to be reasonable. PG&E is put on notice that in its next GRC, we expect it to have corrected the lag problem. The funds we award here should ensure that it will have no problem doing so.

11. The discussion of Meter Reading on pages 334 through 336 is modified to read:

> We appreciate PG&E's commitment to reading customers' meters in a timely, accurate, and efficient manner. Further, we have imposed customer service standards that PG&E will be at risk for failing to meet. However, PG&E has failed to justify its proposed level of spending on meter reading.
>
> PG&E requests a substantial increase in the total meter reading expenses reflected in Account 902. In large part,_ PG&E is now explaining this request by reference to the cost shifts that resulted from its new SAP business system. PG&E witness Lytton asserts in rebuttal testimony that 76% of the Account 902 cost increases over 1994 levels are associated with the business system changes. Lytton further asserts 'that in the absence of the SAP conversion, these costs would have been recorded in other FERC accounts. PG&E claims that in all cases, the costs now reflected in Account 902 have been transferred out of the other FERC accounts, including Accounts 901 and 903.
>
> We do not find the evidence supporting this argument convincing. If PG&E is going to rely upon implementation of a new accounting system as grounds for a near doubling of the metering costs reflected in Account 902, it is incumbent upon PG&E to track the changes and demonstrate clearly that the costs transferred to Account 902 have been removed from other specific accounts on a dollar-for-dollar basis.

12. In the first line of footnote 37 on page 335, "administrative notice" is changed to "official notice".

13. The discussion of Account Services Funding, beginning with the last sentence in the third paragraph on page 341 and ending with the last paragraph on page 342 which continues to the top of page 343, is modified to read:

> We find this "changed circumstances" argument to be unpersuasive.
>
> The fact that PG&E's witness did not know specifically how much of the $39 million requested for Account Services in Account 903 was recorded in Account 912 in the years preceding the accounting change does not enhance our confidence in PG&E's showing. (Tr. v. 22, p. 2114.) Similarly, PG&E's statements about what is included in Account 903 add to our concerns. In rebuttal testimony, PG&E witness Lytton indicates that PG&E's Account 903 "expense estimates include the amounts necessary to provide basic customer services to its CIA customers in 1999." (Exhibit 27, p. 8-17.) We are more interested in knowing if PG&E's estimates are limited to the necessary amounts. Lytton offers little clarification on cross-examination: "What I can say is the 39 million encompasses what is required to fund the account services department employees and the basic service functions they'll perform." (Tr. v. 22, p. 2116.)
>
> Finally, we do not ignore the fact that the accounting change was implemented in 1997, after the Commission denied funding for the Quality Contacts Program in the 1996 GRC. (D.95-12-055, 63 CPUC 2d 570, 597-599. See also D.98-12-096, which denied PG&E's request for rehearing of this issue.) PG&E claims that any reference to the program is irrelevant because it no longer participates in the program. PG&E is only partially correct in this contention. In the 1996 GRC decision, the Commission did not grant a blanket approval for rate recovery of all activities conducted by the Account Services Department as long as those activities are not described as Quality Contacts Program activities. The Commission's concern dealt with the impermissible prospect of asking ratepayers to fund anti-competitive activities. Thus, whether PG&E now participates in something called the Quality Contacts Program may be irrelevant, but the nature of

> activities it asks ratepayers to fund remains as relevant as ever.
>
> It is incumbent upon PG&E to demonstrate that all of the funding it seeks in Account 903 for Account Services on behalf of CIA customers is for basic services only. ORA and Enron raise a legitimate concern that PG&E may be repackaging and renaming services that were not allowed in rates in the 1996 GRC, and seeking rate recovery of the costs of such services in the GRC. Based on the evidence PG&E has presented, we find that PG&E has failed to demonstrate that it requires $39 million to perform basic services on behalf of CIA customers, and it has failed to demonstrate that it has excluded the costs of activities which were disallowed in the last GRC because they are potentially anticompetitive in nature.
>
> PG&E witness Lytton contends that the activities performed now and into 1999 are not those that were discussed during the 1996 GRC as the Quality Contacts Program. To support this contention, the witness states that PG&E no longer has industry experts that attend trade show functions. This explanation is at best incomplete. The fact that PG&E no longer performs a particular activity does not demonstrate that PG&E performs no activities of the category the Commission found ineligible for rate recovery. Moreover, rebuttal evidence presented by PG&E shows that at least in part, the same types of expenses eliminated in the 1996 GRC decision were included in the instant case. PG&E's witness stated that after its application for rehearing on the issue was rejected, PG&E continued to fund these activities for its CIA customers. Contending that level of spending was not sustainable without ratepayer contribution, PG&E then asked for it to be funded again in this case. (Ex. 27, p. 8-23.)
>
> Because PG&E has failed to sustain its burden of proof with respect to the $20 million transfer of expenses to Account 903, ORA's proposal for a disallowance of that amount is adopted.

14. The discussion of CIS capital additions, beginning with the last paragraph on page 400 which continues onto page 401 and ending with the paragraph continuing onto page 403, is modified to read:

PG&E's estimate of $26.6 million in ratepayer funding is too low. PG&E admits that it represents only incrementally authorized funding, but fails to justify ignoring embedded expenses associated with redirected CIS efforts. PG&E would have us believe that it could accomplish what DH&S estimated in 1989 was $21.5 million worth of CIS Rewrite work with the redirection of existing resources, at no cost to ratepayers. Brooks testified that:

"The resources that were to be redirected would continue to perform their current work assignments in addition to the work on the CIS Rewrite. Funds were not to be redirected away from previously approved internal efforts in order to pursue the CIS Rewrite Project." (Exhibit 30, p. 1-44.)

These statements do little to explain how more than $20 million in project work could be accomplished at no cost. In any event, we believe TURN is correct that the feasibility report which formed the basis for PG&E's showing in the 1990 GRC and which in turn supported the funding adopted therein, separates out the costs of maintaining the existing CIS and the costs of the rewrite. (Ex. 318, III-11.) However, the 1990 GRC decision is not clear concerning just what the Commission understood the situation to be. That decision referred to the feasibility report, and stated: "Of the total [cost of the rewrite, $44,290,000], DH&S [PG&E's consultant] estimates that $21,540,000 can be met by redirecting existing resources to the rewrite effort. Thus, the incremental cost of replacement is $22,750,000." D.89-12-057, 34 CPUC 2d 199, 241. This does not clarify whether the embedded costs represented by the redirection of existing resources were all used in the CIS rewrite effort, or if those people continued to work on CIS maintenance as well, as PG&E claims. However, we think it unlikely that PG&E could have gotten over $20 million of work done by using employees who were continuing to work on their old jobs, as well as new ones. In fact, on cross examination, PG&E's own witness testified that while he had no firsthand knowledge of the details of the redirection of employees, it was his opinion that it would be "extremely unlikely" that the employees doing CIS maintenance could be shifted to the CIS rewrite and still have the CIS system continue to run. Brooks, Tr. v. 35, pp. 3975-3976.

Because of the uncertainty associated with the underlying assumptions, we are not fully persuaded by Enron's showing that ratepayers have provided as much as $80 million in CIS funding since the 1990 GRC. What is clear is that the Commission approved $3.2 million in incremental annual CIS funding (in 1996 dollars). Since approximately half of the total 1990 CIS project funding was assumed to be incremental and the other half was assumed to be non-incremental, we may assume that PG&E spent approximately $6.4 million per year in CIS development-related costs for the period from 1990 though 1998. This yields an estimate of total PG&E capital spending on CIS development of approximately $57.6 million for the nine-year period. This is in the predicted range forecasted by the Commission in 1989. We conclude that it is reasonable to assume that over the last three GRC cycles, PG&E has spent $55 to $60 million on CIS projects. By the same token, of course, it is reasonable to assume that over the last three GRC cycles, ratepayers have provided at least $55 million to $60 million in CIS funding.

However, it is not clear how much of PG&E's spending was related to the "patchwork approach" of keeping its existing legacy system up and running while new project development proceeded. In our view, the most plausible conclusion is that at least some of the embedded costs relating to the redirected resources had to be going into the CIS rewrite and not into CIS maintenance. We base this conclusion on the feasibility study which was the basis for the original rewrite funding, approved in the 1990 GRC, and the testimony of PG&E's own witness that it would be "extremely unlikely" that the employees doing CIS maintenance could be shifted to the CIS rewrite and still have the CIS system continue to run (Brooks, 35 RT 3975-3976).

The second question is whether ratepayers have received benefits from the funding they provided. The fact that costly CIS projects were terminated before completion is troubling, and PG&E's reliance on evolving industry conditions, such as the advent of negotiated rates, as reasons for project termination may be overstated. Still, we accept PG&E's expert testimony that while the CIS Rewrite and CIS projects were terminated, components were put into operation and thus became used and useful. We further accept PG&E's estimate of $36 million in ratepayer benefits from these projects. We address competing claims regarding the benefits of the IBM Integrity project in a subsequent section.

Because of our conclusion on the likely allocation of PG&E's spending referred to above, we believe it is appropriate to add at least some of those costs to the amount ratepayers have already paid for CIS rewrite projects, which they should not have to pay again. The issue is just how much. Since the record does not set this forth clearly, we will compromise by splitting the difference. This means that we will consider ratepayers to have funded $43.2 million worth ($28.8 million in incremental costs + $14.4 million, which is half of the embedded costs). The record shows they have received benefits of $36 million; thus we will reduce PG&E's request by $7.2 million.

15. Finding of Fact 43 is modified to read:

An unquantified portion of PG&E's increased electric distribution system maintenance spending in 1996 can be attributed to earlier deficient or deferred maintenance and should not form a basis for test year 1999 authorized revenue requirements. Another unquantified portion of the increased spending was a reasonable and appropriate response by PG&E that may form a valid basis for test year 1999 authorized revenue requirements.

16. Finding of Fact 69 is modified to read:

A showing by PG&E that its electric distribution capital forecast reflects the collective judgment of those who are most knowledgeable about the system, and that reliability and responsiveness will be improved under its spending plan, is an important consideration in evaluating whether PG&E has justified its forecast; the economic justification for the proposed spending should also be considered.

17. Finding of Fact 73 is modified to read:

Although drastically oversimplifying the different economic circumstances of the mid-1990's, TURN'S regression analysis of 20 years of data suggests that PG&E's requested capital spending for the 1997-1999 time period is greater than what would be predicted from PG&E's historical capital spending patters, taking into account customer growth and the size of the system.

18. Finding of Fact 107 is modified to read:

    While the GPRP has been and remains on schedule, the evidence indicates the distribution specific component is lagging somewhat; PG&E will need to replace an additional 20% of the distribution mileage each year to complete the distribution component on time.

19. Finding of Fact 211 is modified to read:

    PG&E's request for meter reading expenses in 1999, which is 15% higher than recorded spending in 1996, a year when the SAP system was in place, has not been justified and is not reasonable.

20. Finding of Fact 216 is modified to read:

    PG&E's proposed increase in Account 903 for Account Services expenses, which is $27.3 million above the $11.7 million recorded level of spending in 1996, (which itself was the highest level of the five-year period ending with 1996) has not been justified and is not reasonable.

21. Finding of Fact 218 is modified to read:

    PG&E has explained how its new understanding of its role as a distribution utility justifies transferring to Account 903 expenses that were previously booked to Account 912, but has not provided the specifics of those transfers.

22. Finding of Fact 292 is modified to read:

    While the CIS Rewrite and CIS projects were terminated, components were put into operation and thus became used and useful. PG&E's estimate of $36 million in ratepayer benefits from these projects is supported by the record evidence.

23. New Finding of Fact 292a is added to read:

    The record supports a compromise position that ratepayers have funded $43.2 million in CIS rewrite project costs ($28.2 million in incremental costs and $14.4 million in embedded costs), which, when balanced against ratepayer benefits of $36 million, justifies a reduction of $7.2 million in PG&E's CIS capital additions request.

24. Finding of Fact 297 is modified to read:

> Except for the $10.8 million write-off associated with the IBM integrity project and the $7.2 million disallowance to account for embedded costs of rewrite efforts paid for by ratepayers, PG&E's requested CIS capital additions are just and reasonable.

25. Finding of Fact 352 is modified to read:

> The evidence demonstrates that in the context of the regulatory setting we adopt in today's decision, i.e., that PG&E will not proceed directly to PBR but will undergo at least one more GRC in 2002, it is reasonable to authorize PG&E to file for an attrition adjustment for 2001.

26. Conclusion of Law 6 is modified to read:

> Under the clear and convincing evidence standard, it is PG&E's obligation to support all aspects of its application through clear and convincing evidence.

27. The Results of Operations tables appended to D.00-02-046 are amended by changing the uncollectibles factor to 0.00267.

IT IS FURTHER ORDERED that rehearing is granted to allow PG&E to put in evidence of exactly how much it invested in its electric distribution plant in 1998. In conjunction with the rehearing, it is ordered that any rates that are raised based on the electric distribution capital forecast adopted in D.00-02-046 be made subject to refund, to allow for possible adjustment of this forecast pending the results of the rehearing. The assigned ALJ shall establish an appropriate schedule for and procedures governing such rehearing.

IT IS FURTHER ORDERED that following the rehearing ordered above, and following resolution of all other outstanding matters relevant to an ultimate outcome in this proceeding, a final Results of Operations analysis shall be performed and a final revenue requirement determined.

This order is effective today.

Dated October 10, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
GEOFFREY F. BROWN
Commissioners

I dissent.

/s/ CARL W. WOOD
Commissioner